

# ARKANSAS SUPREME COURT

No. CR 81-82

NOT DESIGNATED FOR PUBLICATION

Opinion Delivered February 22, 2007

ROBERT R. HEFFERNAN  
A/K/A ROBERT RICHARD  
HEFFERNAN  
Petitioner

*PRO SE* PETITION TO REINVEST  
JURISDICTION IN TRIAL COURT TO  
CONSIDER A PETITION FOR WRIT  
OF ERROR *CORAM NOBIS* [CIRCUIT  
COURT OF SALINE COUNTY, CR 80-  
41]

v.

STATE OF ARKANSAS  
Respondent

PETITION DENIED.

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## PER CURIAM

Robert R. Heffernan, also known as Robert Richard Heffernan, was convicted by a jury of capital felony murder and sentenced to life imprisonment without parole in the Arkansas Department of Correction. This court affirmed. *Heffernan v. State*, 278 Ark. 325, 645 S.W.2d 666 (1983).

Now before us is petitioner's *pro se* petition to reinvest jurisdiction in the trial court to consider a petition for writ of error *coram nobis*.<sup>1</sup> The petition for leave to proceed in the trial court with a petition for writ of error *coram nobis* is necessary because the circuit court can entertain a petition for writ of error *coram nobis* after a judgment has been affirmed on appeal only after we grant permission. *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (*per curiam*).

A writ of error *coram nobis* is an extraordinarily rare remedy, more known for its denial than

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<sup>1</sup>For clerical purposes, the instant pleading was assigned the same docket number as the direct appeal of the judgment.

its approval. *Larimore v. State*, 341 Ark. 397, 17 S.W.3d 87 (2000). We have held that a writ of error *coram nobis* was available to address certain errors that are found in one of four categories: insanity at the time of trial, a coerced guilty plea, material evidence withheld by the prosecutor, or a third-party confession to the crime during the time between conviction and appeal. *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (*per curiam*). For the writ to issue following the affirmance of a conviction, the petitioner must show a fundamental error of fact extrinsic to the record. *Larimore v. State*, 327 Ark. 271, 938 S.W.2d 818 (1997).

A writ of error *coram nobis* is appropriate only when an issue was not addressed or could not have been addressed at trial because it was somehow hidden or unknown and would have prevented the rendition of the judgment had it been known to the trial court. *Echols v. State*, 360 Ark. 332, 201 S.W.3d 890 (2005) (“*Echols Error Coram Nobis IP*” or “*Echols ECN IP*”); *Brown v. State*, 330 Ark. 627, 955 S.W.2d 901 (1997). *Coram nobis* proceedings are attended by a strong presumption that the judgment of conviction is valid. *Penn v. State*, 282 Ark. 571, 670 S.W.2d 426 (1984), citing *Troglin v. State*, 257 Ark. 644, 519 S.W.2d 740 (1975).

In making a determination of whether petitioner’s allegations are meritorious, we look to the reasonableness of the allegations of the petition and to the existence of the probability of the truth thereof. *Echols v. State*, 354 Ark. 414, 125 S.W.3d 153 (2003) (“*Echols Error Coram Nobis I*” or “*Echols ECN I*”), citing *Jenkins v. State*, 223 Ark. 245, 265 S.W.2d 512, *cert denied*, 347 U.S. (1954).

Here, petitioner claims that he was insane and incompetent at all stages of his trial, he was taking psychotropic medications, and, thus, did not possess any rational understanding of the proceedings against him and was unable to assist his attorneys in his defense. He claims that this

condition persisted from 1981 until 1986 or 1987. Further, petitioner states that he was unaware of the error *coram nobis* procedure until 2006, suggesting that he used due diligence in making a claim under this procedure in 2007.

Petitioner's assertions rest upon records from his underlying criminal trial. These records include an order by the trial court that petitioner be committed to the Arkansas State Hospital for psychiatric evaluation, dated December 17, 1980. This order was issued by the trial court pursuant to a motion by petitioner's trial counsel, and included language stating that "special precautions should be taken . . . to prevent [petitioner] committing suicide."

A psychological evaluation dictated on January 12, 1981, stated that petition was competent to assist in his defense. In evaluating petitioner, a diagnostic note stated that petitioner did not exhibit any psychosis and that he was "[m]entally fit to proceed and responsible at time of commission of offense."

Subsequent to the psychological evaluation, petitioner was returned to the jail in Malvern where he attempted to kill himself. In another order, dated January 16, 1981, the trial court committed petitioner to the state hospital for treatment related to his suicide attempt. Later orders allowed petitioner to be transferred into the temporary custody of the Saline County Sheriff Department for petitioner's attendance at hearings and the trial.

A discharge summary indicated that petitioner was given a number of medications during his confinement to the state hospital, which were used to treat infections and allergies, in addition to depression and mental/mood disorders. However, he was discharged with no prescriptions written for him.

None of the evidence presented by petitioner supports his claims of insanity at the time of

trial or thereafter. Instead, all the documents relied upon by petitioner indicate only that petitioner was suicidal prior to trial and mentally competent to stand trial. More importantly, each of the documents relied upon by petitioner was available to trial counsel at the time of the criminal trial. Thus, the issue of petitioner's mental condition at the time was addressed at the time of his trial, and was not hidden or unknown to trial counsel. *Echols, supra*. Furthermore, as to petitioner's condition subsequent to the trial, petitioner submits no evidence in support of his claims that his alleged insanity continued for several years thereafter. Petitioner has failed to show a fundamental error of fact extrinsic to the record.

Finally, as to due diligence, assuming, *arguendo*, that petitioner was incompetent until 1986 or 1987, petitioner did not file his petition for writ of error *coram nobis* until twenty years later. In the absence of a valid excuse for delay, the petition will be denied. *Echols, supra*. Petitioner has shown no valid excuse for his delay as he has failed to prove his claims of insanity through 1987, and has shown no valid excuse for any delay thereafter.

In a petition for writ of error *coram nobis*, it is the petitioner's burden to show that the writ is warranted. Here, petitioner has failed to make a showing that the allegations contained in his petition are meritorious. We cannot say that petitioner's claims of insanity during and after the trial are reasonable, or that the probability exists as to the truthfulness of his alleged insanity.

Petition denied.